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*Attorneys for Plaintiff National Steel Car Limited*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

NATIONAL STEEL CAR LIMITED,

Plaintiff,

vs.

GREENBRIER LEASING COMPANY, LLC,  
and GREENBRIER-CONCARRIL LLC,

Defendants.

Case No. 3:20-cv-01275-YY

FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT

**JURY TRIAL DEMANDED**

Plaintiff National Steel Car Limited (“NSC”), by and through its attorneys, brings this action against Greenbrier Leasing Company, LLC (“Greenbrier Leasing”) and Greenbrier-Concarril LLC (“Greenbrier-Concarril”) (collectively “Greenbrier”) to stop Greenbrier’s infringement of NSC’s patents, which protect NSC’s proprietary railroad cars, and hereby alleges as follows:

### **NATURE OF THE ACTION**

1. This is a civil action arising under the laws of the United States, 35 U.S.C. §1, *et seq.*, for patent infringement. NSC seeks damages and injunctive relief as provided in 35 U.S.C. §§ 281, 283-85.

### **THE PARTIES**

2. NSC is a corporation organized and existing under the laws of Canada, having its principal place of business at 600 Kenilworth Avenue North, Hamilton, Ontario, Canada L8N 3J4. NSC is a leading manufacturer of innovative products for the railroad industry, including freight cars that are best-in-class in North America.

3. Upon information and belief, Greenbrier Leasing is a corporation organized and existing under the laws of the State of Oregon, having its headquarters and principal place of business in this District at One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035.

4. Upon information and belief, Greenbrier-Concarril is a corporation organized and existing under the laws of the State of Oregon, having its headquarters and principal place of business in this District at One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over NSC’s claims of patent infringement pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331 and 1338(a), and the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

6. This Court has personal jurisdiction over Greenbrier Leasing generally because Greenbrier maintains a principal place of business in this District. Therefore, Greenbrier has established minimum contacts within the forum such that the exercise of jurisdiction over Greenbrier would not offend traditional notions of fair play and substantial justice.

7. This Court has personal jurisdiction over Greenbrier-Concarril generally because Greenbrier maintains a principal place of business in this District. Therefore, Greenbrier has established minimum contacts within the forum such that the exercise of jurisdiction over Greenbrier would not offend traditional notions of fair play and substantial justice.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

#### **BACKGROUND AND THE PATENTS-IN-SUIT**

9. Since its founding in 1912, NSC has maintained a strong commitment to engineering and manufacturing freight cars that are unmatched in quality, strength, and design. NSC has devoted significant resources to innovation, which earned NSC a reputation as North America's preeminent railroad freight car manufacturer and a market leader in the railroad industry today.

10. To protect its intellectual property, NSC has been granted more than 150 U.S. patents since the late 1980's. In particular, NSC applied for and obtained patents directed to a railroad gondola car as set forth in, for example, U.S. Patent Nos. 7,434,519, and 7,878,125 ("the Patents-in-Suit").

11. United States Patent No. 7,434,519 ("the '519 Patent"), entitled "RAIL ROAD FREIGHT CAR," was duly and legally issued by the United States Patent and Trademark Office on October 14, 2008. A true and correct copy of the '519 Patent is attached to this complaint as

Exhibit A. The ‘519 Patent is assigned to NSC, which owns all right, title, and interest in and to the ‘519 Patent necessary to bring this suit for infringement of the ‘519 Patent.

12. United States Patent No. 7,878,125 (“the ‘125 Patent”), entitled “RAILROAD FREIGHT CAR,” was duly and legally issued by the United States Patent and Trademark Office on February 1, 2011. A true and correct copy of the ‘125 Patent is attached to this complaint as Exhibit B. The ‘125 Patent is assigned to NSC, which owns all right, title, and interest in and to the ‘125 Patent necessary to bring this suit for infringement of the ‘125 Patent.

13. NSC manufactures and sells gondola railcars that embody one or more asserted claims of the ‘519 Patent and the ‘125 Patent (“NSC’s unibody railcar”). NSC’s unibody railcars has been very successful in the market since their introduction in the railcar industry.

14. A key reason for NSC’s success as an innovator is its ability to look beyond tradition. A gondola railcar is a specific type of railcar, typically used to haul bulk materials, such as crushed rock, woodchips, or scrap metal, for example. The traditional approach to designing gondola railcars is to use a bulky underframe to provide the primary structural support when the railcar is loaded. Ex. A at 1:09-2:06; 9:48-58. In such designs, components such as the floor and the sidewall structures are merely used to prevent the lading (or cargo) from spilling out; they play little role in the structural integrity of the railcar. *See id.* A significant problem with this traditional approach, however, is the weight of the gondola cars. Traditional designs “tend to be quite heavy,” negatively impacting “the ratio of allowable lading weight to car weight.” *Id.* at 1:58-2:01. This results in the railcar being able to haul less lading when loaded and requiring more fuel to backhaul when empty. *Id.*

15. To reduce the weight of its gondola railcars without sacrificing the structural integrity, NSC invented a unibody construction in which the floor and side beams serve as

structural members of the railcar that replicates the structural support provided by conventional underframe components. This enables the reduction or removal of these components without undermining the structural integrity of the railcar. The two Patents-in-Suit are part of a portfolio of six NSC patents that provide a considerable amount of detail on what modifications need to be made in order to best achieve this result. The asserted claims herein below recite a gondola car with variations of the unibody design.

### **GREENBRIER'S PATENT INFRINGEMENT**

16. Greenbrier Leasing has offered for sale, sold, offered for lease, and/or leased, in the United States, railroad gondola cars covered by one or more claims of the Patents-In-Suit, including 6400 cubic foot and 7100 cubic foot gondola cars, including gondola cars stenciled with AAR reporting marks CDEX 19005 and CDEX 19432:





17. Greenbrier Leasing has offered for sale, sold, offered for lease, and/or leased, in the United States, railroad gondola cars that are the same as, or “reasonably similar” as, the CDEX 19005 and CDEX 19432 cars, including both 6400 cubic foot and 7100 cubic foot gondola cars.

18. Upon information and belief, Greenbrier Leasing continues (or at least has plans to continue) to offer for sale, sell, offer for lease, and lease, in the United States, infringing cars, including but not limited to additional cars that are the same as, or “reasonably similar” as, the CDEX 19005 and CDEX 19432 cars, including both 6400 cubic foot and 7100 cubic foot gondola cars.

19. Greenbrier-Concarril has offered for sale, sold, offered for lease, leased, in the United States, and/or imported into the United States, railroad gondola cars covered by one or more claims of the Patents-In-Suit, including 6400 cubic foot and 7100 cubic foot gondola cars, including gondola cars stenciled with AAR reporting marks CDEX 19005 and CDEX 19432.

20. Greenbrier-Concarril has offered for sale, sold, offered for lease, and/or leased, in the United States, and/or imported into the United States, railroad gondola cars that are the same as, or “reasonably similar” as, the CDEX 19005 and CDEX 19432 cars, including both 6400 cubic foot and 7100 cubic foot gondola cars.

21. Upon information and belief, Greenbrier-Concarril continues (or at least has plans to continue) to offer for sale, sell, offer for lease, and/or lease, in the United States, and/or import into the United States, infringing cars, including but not limited to additional cars that are the same as, or “reasonably similar” as, the CDEX 19005 and CDEX 19432 cars.

22. Greenbrier Leasing and Greenbrier-Concarril have had actual knowledge of the ‘519 and ‘125 Patents at least as early as December 23, 2019, when this action was first filed. On information and belief, Greenbrier Leasing and Greenbrier-Concarril had actual knowledge of the ‘519 and ‘125 Patents years earlier, as a result of the litigation that NSC filed against FreightCar America, Inc., and prior to the design and development of the Infringing Cars. Upon information and belief, Greenbrier Leasing and/or Greenbrier-Concarril became aware of the existence of the Patents-in-Suit in or around October 2018 as a result of an inspection of an NSC unibody railcar marked with the ‘519 Patent and the ‘125 Patent.

### **COUNT I**

#### **Infringement of U.S. Patent No. 7,434,519**

23. NSC incorporates by reference the allegations in paragraphs 1 through 22, as if fully set forth herein.

24. Greenbrier Leasing and Greenbrier-Concarril have infringed, for example, one or more of claims 1–4, 8, 9, 11–16, 18, 19, and 22–25 of the ‘519 Patent literally or under the doctrine of equivalents in violation of 35 U.S.C. § 271(a) by selling, offering for sale, leasing, offering for lease, and/or importing infringing gondola rail cars including the CDEX 19005,

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CDEX 19432, and other 6400 cubic foot and 7100 cubic foot gondola cars that are the same or “reasonably similar” (collectively, the “Infringing Cars”). Exhibit C, attached hereto, is a claim chart showing how the design and structure of the Infringing Cars meet every limitation of, and therefore infringe, one or more of claims 1–4, 8, 9, 11–16, 18, 19, and 22–25 of the ‘519 Patent.

25. Greenbrier Leasing and Greenbrier-Concarril have infringed one or more claims of the ‘519 Patent in violation of 35 U.S.C. § 271(b) by actively inducing others to use infringing products including the Infringing Cars. For example, with knowledge of the ‘519 Patent, Greenbrier Leasing and Greenbrier-Concarril have offered and delivered the Infringing Cars to customers, including, for example, Tunnel Hill Partners, with the intent that Tunnel Hill Partners directly infringe the ‘519 Patent by using the Infringing Cars without NSC’s authorization.

26. NSC’s unibody railcars are marked with the ‘519 Patent. Its marking history was “substantially consistent and continuous” from even before the ‘519 Patent issued, when NSC marked its unibody railcar with “patent pending,” which included the then-pending ‘519 Patent, among others. Indeed, NSC’s marking for the ‘519 Patent has been continuous and uninterrupted since at least late 2014, long before Greenbrier Leasing and Greenbrier-Concarril began infringing the ‘519 Patent.

27. Greenbrier Leasing and Greenbrier-Concarril, therefore, had actual and/or constructive notice of the ‘519 Patent since at least late 2014.

28. NSC has suffered and continues to suffer damages as a result of Greenbrier Leasing’s and Greenbrier-Concarril’s infringement of the ‘519 Patent in an amount to be determined at trial, which, by law, cannot be less than a reasonable royalty, but may also include lost profits, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.



29. Greenbrier Leasing's and Greenbrier-Concarril's infringement of the '519 Patent has damaged and will continue to damage NSC, causing irreparable harm for which there is no adequate remedy at law, unless and until Greenbrier Leasing and Greenbrier-Concarril are enjoined by this Court.

30. Greenbrier Leasing's and Greenbrier-Concarril's infringement of the '519 Patent has been and continues to be deliberate and willful. Upon information and belief, Greenbrier Leasing and/or Greenbrier-Concarril became aware of the existence of the '519 Patent at least as early as October 2018 and observed the most desirable car built by NSC when visiting two locations of Tunnel Hill Partners (a waste-by-rail company) in New York and Ohio. This is therefore an exceptional case warranting an award of enhanced damages for up to three times the actual damages awarded and attorneys' fees to NSC pursuant to 35 U.S.C. §§ 284-285.

**COUNT II**  
**Infringement of U.S. Patent No. 7,878,125**

31. NSC incorporates by reference the allegations in paragraphs 1 through 22, as if fully set forth herein.

32. Greenbrier Leasing and Greenbrier-Concarril have infringed, for example, one or more of claims 1, 11, 15, 16, 18, and 19 of the '125 Patent literally or under the doctrine of equivalents in violation of 35 U.S.C. § 271(a) by selling, offering for sale, leasing, offering for lease, and/or importing the Infringing Cars. Exhibit D, attached hereto, is a claim chart showing how the design and structure of the Infringing Cars meet every limitation of, and therefore infringe, one or more of claims 1, 11, 15, 16, 18, and 19 of the '125 Patent.

33. Greenbrier Leasing and Greenbrier-Concarril have infringed one or more claims of the '125 Patent in violation of 35 U.S.C. § 271(b) by actively inducing others to use infringing products including the Infringing Cars. For example, with knowledge of the '125 Patent,

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Greenbrier Leasing and Greenbrier-Concarril have offered and delivered the Infringing Cars to customers, including, for example, Tunnel Hill Partners, with the intent that Tunnel Hill Partners directly infringe the ‘125 Patent by using the Infringing Cars without NSC’s authorization.

34. NSC’s unibody railcars are marked with the ‘125 Patent. Its marking history was “substantially consistent and continuous” from even before the ‘125 Patent issued, when NSC marked its unibody railcar with “patent pending,” which included the then-pending the ‘125 Patent, among others. Indeed, NSC’s marking for the ‘125 Patent continuous and uninterrupted since late 2011, long before Greenbrier Leasing and Greenbrier-Concarril began infringing the ‘125 Patent.

35. Greenbrier Leasing and Greenbrier-Concarril, therefore, had actual and/or constructive notice of the ‘125 Patent since at least late 2011.

36. NSC has suffered and continues to suffer damages as a result of Greenbrier Leasing’s and Greenbrier-Concarril’s infringement of the ‘125 patent in an amount to be determined at trial, which, by law, cannot be less than a reasonable royalty, but may also include lost profits, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

37. Greenbrier Leasing’s and Greenbrier-Concarril’s infringement of the ‘125 patent has damaged and will continue to damage NSC, causing irreparable harm for which there is no adequate remedy at law, unless and until Greenbrier Leasing and Greenbrier-Concarril are enjoined by this Court.

38. Greenbrier Leasing’s and Greenbrier-Concarril’s infringement of the ‘125 Patent has been and continues to be deliberate and willful. Upon information and belief, Greenbrier Leasing and/or Greenbrier-Concarril became aware of the existence of the ‘125 Patent at least as early as October 2018 and observed the most desirable car built by NSC when visiting two

locations of Tunnel Hill Partners (a waste-by-rail company) in New York and Ohio. This is therefore an exceptional case warranting an award of enhanced damages for up to three times the actual damages awarded and attorney's fees to NSC pursuant to 35 U.S.C. §§ 284-285.

### **PRAYER FOR RELIEF**

WHEREFORE, NSC prays for the following judgments and relief against Greenbrier:

1. A judgment that Greenbrier Leasing and Greenbrier-Concarril have infringed and are infringing the Patents-In-Suit;
2. A permanent injunction against Greenbrier Leasing, Greenbrier-Concarril, and each of their affiliates, subsidiaries, assigns, employees, agents, or anyone acting in privity or concert with Greenbrier Leasing and/or Greenbrier-Concarril from infringing the Patents-in-Suit;
3. An award of all damages adequate to compensate NSC for Greenbrier Leasing's and Greenbrier-Concarril's patent infringement, such damages to be determined by a jury, and if necessary an accounting to adequately compensate NSC for the infringement;
4. A judgment that Greenbrier Leasing's and Greenbrier-Concarril's infringement was willful and that the Court award treble damages for the period of such willful infringement pursuant to at least 35 U.S.C. § 284;
5. An award of pre-judgment and post-judgment interest at the maximum rate allowed by law;
6. An order finding that this is an exceptional case and awarding NSC its costs, expenses, disbursements, and reasonable attorneys' fees related to Greenbrier Leasing's and Greenbrier-Concarril's patent infringement under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and

///

7. Such other further relief, in law or equity, as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

NSC hereby demands a jury trial on any and all issues appropriately triable before a jury.

Dated: June 25, 2021

Respectfully submitted,

By: /s/ C. Marie Eckert

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing First Amended Complaint for Patent Infringement on:

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by the following indicated methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **Email.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were emailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☒ **Email (courtesy copy).**

DATED: June 25, 2021

/s/ C. Marie Eckert

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